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**SCHEDULE**
A Bill for

AN ACT of Parliament to provide for the functions and powers of the Office of the Auditor-General in accordance with the Constitution, and for connected purposes

ENACTED by Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Public Audit Act, 2014.

2. In this Act, unless the context otherwise requires—

"Accounting Officer" means—

(a) an Accounting Officer of the Office of the Auditor-General referred to under section 16(1)(b);

(b) an Accounting Officer as defined under section 2 of the Public Finance Management Act, 2012;

"Audit Committee" means an audit committee established under sections 73(5) and 155(5) of the Public Finance Management Act, 2012;

"Auditor-General" means the Auditor-General appointed in accordance with Article 229 of the Constitution and section 11 of this Act;

"Appropriation" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

"county government entity" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

"effectiveness" means prudent, efficient, economic, transparent and accountable use of public funds to ensure government achieves value for money and that such funds are applied for intended purpose;
"financial year" has the meaning assigned to it under Article 260 of the Constitution;

"lawful" includes compliance with a state organ's internal regulations, internal policies, programmes and the prescribed measures for securing efficient and transparent fiscal management;

"office" means the Office of the Auditor-General established under section 4 of this Act;

"public officer" has the meaning assigned to it in Article 260 of the Constitution;

"public funds" means—

(a) all money that comes into possession of, or is distributed by, by a State organ including the national or county governments and intergovernmental entities and money raised by a private body under statutory authority;

(b) money held by State organ or public entities in trust for third parties and any money that can generate liability for the government;

"public debt" has the meaning assigned to it under Article 214 of the Constitution;

"public entity" includes any department or agency of the government and any authority, body or other entity declared to be a government entity under the Public Finance Management Act;

"Receiver of Revenue" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

"State Organ" has the meaning assigned to it under Article 260 of the Constitution; and

"Wasteful Expenditure" has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012.
3. (1) In discharging its functions under this Act, the Office of the Auditor-General and any person to whom this Act applies, shall be guided by the values, principles and requirements of the Constitution, including—

(a) the national values and principles provided for under Article 10 of the Constitution;

(b) the equality and freedom from discrimination provided for under Article 27 of the Constitution;

(c) the responsibilities of leadership provided for under Article 73 of the Constitution;

(d) the principles governing the conduct of State officers provided for under Article 75 of the Constitution;

(e) the principles of public finance under Article 201of the Constitution; and

(f) the values and principles of Public Service as provided for under Article 232 of the Constitution.

(2) In addition to the values and principles in subsection (1), the Auditor-General shall promote efficiency, accountability, effectiveness and transparency on use of public resources.

PART II—ESTABLISHMENT OF THE OFFICE OF THE AUDITOR-GENERAL

4. (1) There is established an office to be known as the Office of the Auditor-General which shall be a body corporate in accordance with Article 253 of the Constitution and shall be capable of—

(a) suing and being sued;

(b) acquiring, safeguarding, holding, charging and disposing of moveable and immovable property; and

(c) doing or performing all such other things or acts for the proper discharge of its functions under
this Act, which may be lawfully done by a body corporate.

(2) The office shall comprise the Auditor-General as its statutory head and all staff including the staff appointed by the Auditor-General, subject to Article 234(5) of the Constitution.

(3) The Office of the Auditor-General shall ensure reasonable access to its services in all parts of the Republic, as far as it is appropriate to do so.

(4) The headquarters of office of the Auditor-General shall be in the capital city but the office may establish branches at any place in Kenya.

5. (1) A person shall be qualified for appointment as the Auditor-General if such person:

(a) is a citizen of Kenya;
(b) holds the respective qualifications for the office specified in Article 229 of the Constitution;
(c) holds a degree in finance, accounting or economics from a university recognized in Kenya;
(d) meets the requirements of Chapter Six of the Constitution; and
(e) is a member in good standing of a professional body for accountants recognized by law.

6. (1) The Common seal of the Office shall be kept in the custody of the Auditor-General or in the custody of such other person as the Auditor-General may direct.

(2) The Common Seal of the Office when affixed to a document and duly authenticated shall be judicially and officially noticed, and unless and until the contrary is provided any necessary order or authorization by the Office under this section shall be presumed to have been duly given provided that express authority of the Auditor-General is procured.
7. (1) In addition to the functions and responsibilities of the Auditor-General as set out in Article 229 of the Constitution, the Auditor-General shall—

(a) give assurance on the effectiveness of internal controls, risk management and overall financial systems of state organs and public entities

(b) undertake audit activities in state organs and public entities to confirm whether or not public money has been applied lawfully and in an effective way.

(c) satisfy himself or herself that all public money has been used and applied to the purposes intended and that the expenditure conforms to the authority for such expenditure.

(d) confirm that—

(i) all reasonable precautions have been taken to safeguard the collection of revenue and the acquisition, receipt, issuance and proper use of assets and liabilities; and

(ii) collection of revenue and acquisition, receipt, issuance and proper use of assets and liabilities conforms to the authority;

(e) issue an audit report in accordance with Article 229 of the Constitution;

(f) give an opinion on whether the financial statements are adequate and reliable.

(g) provide any other reports as may be required under Article 254 of the Constitution; and

(h) perform any other function as may be prescribed by any other written legislation.

(2) Without prejudice to the generality of subsection (1), the Auditor-General may undertake any audits required under the Constitution, this Act or any other relevant law.
8. In addition to the powers and functions conferred under the Constitution, this Act and other relevant laws, and, pursuant to Articles 252 (1) (c) and 232 of the Constitution, the Auditor-General shall—

(a) subject to section 11 of this Act, develop an organisation structure and staffing establishment for the Office of the Auditor-General;

(b) recruit and promote qualified and competent staff to perform the Office's functions;

(c) subject to Article 234(5) of the constitution, exercise disciplinary control over staff;

(d) subject to Article 234(5) of the Constitution, develop human resource of the office;

(e) approve a strategic and operational plan developed by the Accounting Officer;

(f) approve the financial statements to be released to an outsourced external auditor contracted in terms of section 23;

(g) approve budget estimates of the Office of the Auditor-General;

(h) subject to Article 230 (4)(b) of the Constitution, determine the remuneration and benefits of each member of staff;

(i) review and approve a list of audit firms and individual experts shortlisted for provision of outsourced services;

(j) in addition to what is provided for under any other relevant law, and in consultation with the Public Service Commission and the National Treasury, develop and maintain a code of conduct and Ethics for the office, specific to auditing, guided by the International code of practice, and code of
Ethics issued by the International Organization of Supreme Audit Institutions;

(k) establish such committees as necessary, including an executive committee comprising of the Auditor-General and senior management staff, where necessary, to perform functions under this law where the Auditor-General deems appropriate to delegate to such committees; and

(l) have any other powers necessary to carry out his or her functions under this Act or any other relevant law.

9. (1) Without prejudice to the powers given under the Constitution and this Act and for the purposes of carrying out his or her duties effectively, the Auditor-General, or an officer authorized for the purpose of this Act, shall have powers—

(a) to conduct investigations on his or her own initiative, or on the basis of a complaint made by a third party;

(b) to obtain professional assistance, consultancy or advice from such persons or organizations whether within or outside public service as he/she considers appropriate;

(c) of conciliation, mediation and negotiation;

(d) to issue summons to a witness for the purposes of his or her investigation;

(e) of unrestricted access to—

(i) all books, records, returns, reports, electronic or otherwise and other documents of entities listed under Article 229 (4) of the Constitution;
(ii) any property or premises used or held by State Organs or public entities covered by Article 229 (4) of the Constitution and subject to audit under this Act:

Provided that such access is reasonably necessary, in the opinion of the Auditor-General, in carrying out his or her functions;

(f) to request any public officer that is subject to this Act to provide explanations, information and assistance in person and in writing;

(g) to locate any of his or her staff or an agent, for a time period to be determined by the Auditor-General, at the premises of any State Organ or public entity that is the subject of an audit or examination or review and that entity shall provide access to staff or agent and adequate office space, furniture and telephone access at the expenses of that State Organ or public entity;

(h) to identify the origin of a transaction or officer who directed or approved it, where he or she has determined inaction, omissions, misuse or abuse of public resources by a public officer;

(i) to perform any function and exercise any powers prescribed by any other legislation, in addition to the functions and powers conferred by the Constitution.

(2) In addition to the powers under the Constitution, and subsection (1), the Auditor-General may without payment of a fee—

(a) require a search to be made of any records in a public office;

(b) require copies to be made of, or extracts to be taken from, any records in a public office;

(c) seize or access or obtain official electronic messages to the extent that it is necessary for
purposes of undertaking an investigation or forensic audit in entities listed under Article 229(4) of the Constitution; and

(d) solicit assistance of other National and County governments agencies in the exercise of his/her responsibilities under the constitution, this Act or any other written law.

10. (1) The Auditor-General shall not be subject to direction or control by any person or authority in carrying out his or her functions under the Constitution or under this Act.

(2) Without prejudice to the generality of subsection (1), the Auditor-General and his or her staff shall perform their functions impartially, without fear, favour or prejudice and shall exercise their powers independently subject to the provisions of the Article 249(2) of the Constitution, the provision of this Act and any other written law.

11. (1) The office of the Auditor-General shall become vacant if the Auditor-General—

(a) dies;

(b) by a notice in writing addressed to the President, resigns from office; or

(c) is removed from office under any of the circumstances specified in Article 251 or Chapter Six of the Constitution.

(2) Where a vacancy occurs under subsection (1), the President shall within seven days, by notice in the Gazette, in at least two newspapers of national circulation and in at least two national radio and television stations, declare vacancies in the office of the Auditor-General and invite applications.

(3) An application under subsection (1) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any:
(a) qualified person;
(b) person, organisation or group of persons proposing the nomination of any qualified person;

(4) The names of all applicants under subsection (2) shall be published in the Gazette.

(5) The public Service Commission shall, within seven days of the expiry of the period prescribed under subsection (2), convene a committee comprising one representative each of the:

(a) office of the President;
(b) Ministry for the time being responsible for matters relating to finance;
(c) State law office;
(d) Ministry for the time being responsible for matters relating to the public service; and
(e) Institute of Certified Public Accountants of Kenya.

For the purpose of considering the applicants and selecting at least three persons qualified for appointment as Auditor-General:

Provided the for the purposes of selection and shortlisting of the said three persons, the Public Service Commission shall hold its proceedings in public and submit to Parliament a report of the interview proceedings, which should include *inter alia*, scores of each candidate interviewed by individual members of the interviewing panel together with the criteria used in selecting the names forwarded.

(6) The public Service Commission shall within seven days of the selection of candidates under subsection (4), forward the names of the selected candidates to the President for nomination.

(7) The President shall, within seven days of the receipt of the names of the selected candidates under subsection (5), nominate one candidate for appointment as the Auditor-General and forward the name to the National
(8) The National Assembly shall consider the nominations and may approve or reject the nominations.

(9) Where the National Assembly:

(a) approves the nominee, the Speaker shall, within three days of the approval, forward the names of the approved nominee to the President for appointment;

(b) reject the nomination, the speaker shall, within three days of the rejection, communicate the decision to the President, who shall submit a fresh nominee from amongst the candidates forwarded by the Public Service Commission under subsection (6).

(10) If the National Assembly rejects all or any subsequent nominee submitted by the President for approval under subsection (8), the provisions of subsections (1) to (7) shall, with the necessary modifications, apply.

(11) The President shall, within seven days of the receipt of the approved nominee from the National Assembly, by notice in the Gazette, appoint the Auditor-General approved by the National Assembly.

(12) For the avoidance of doubt, the Public Service Commission shall only provide secretariat services for the selection committee convened under subsection (4).

(13) Despite the foregoing provisions of this section, the President may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

12. (1) Where:

(a) The office of the Auditor-General becomes vacant;

(b) The Auditor-General has been suspended in accordance with the Constitution;
(c) The appointment of a person as Auditor-General is pending; or

(d) The Auditor-General is, for any reason unable to perform the function of his or her office,

then, until a person is appointed to and has assumed the functions of that office in accordance with Section 11 above, or until the Auditor-General has resumed the performance of those functions, the President shall designate the most senior officer in the office of the Auditor-General, who meets the minimum qualifications for appointment to the office of the Auditor-General to perform those functions in an acting capacity for a period not exceeding twelve months.

(2) If the Auditor-General is unable to return to office, the appointment of the person to replace the Auditor-General shall not be later than three months before the expiry of the period for which the person referred to in subsection (1) is designated to act.

(3) When acting in terms of subsection (1), the acting Auditor-General shall have all the powers of the Auditor-General.

13. The Auditor General shall, before assuming office, make and subscribe to the oath or affirmation set out in the Schedule before the Chief Justice.

14. The Office of the Auditor-General shall develop and submit the organisational structure to the Public Service Commission for approval in accordance with Article 234(2)(a) of the Constitution.

15. (1) There shall be a Senior Deputy Auditor-General who shall be recruited by the Office of the Auditor-General and appointed by the Public Service Commission.

(2) A person shall be qualified for recruitment and appointment as the Senior Deputy Auditor-General to the Office if that person—

(a) is a Citizen of Kenya;
(b) has extensive knowledge of public finance or ten years' experience in the field of auditing, public finance management, accounts, law, administration, or corporate governance;

(c) has a post-graduate degree in management or a related field from a university recognised in Kenya; and

(d) meets the requirements of Chapter Six of the Constitution.

16. (1) The Senior Deputy Auditor-General shall —

(a) be the head of administration and management of the office of the Auditor-General;

(b) be the accounting officer of the Office of the Auditor-General; and

(c) perform such duties and exercise such other powers as the Auditor-General may delegate to him or her or perform other duties as spelled out by the office of the Auditor-General.

(2) In performance of his or her responsibilities under this subsection (1)(a), the Senior Deputy Auditor General shall report to the Auditor-General.

17. (1) The office of the Auditor General may recruit such other staff as may be necessary for proper discharge of his/her functions under the Constitution, this Act and any other written law, upon such terms and conditions as he/she may determine in consultation with the Salaries and Remuneration Commission and the Auditor General may appoint such staff subject to Article 234 (5) of the Constitution.

(2) The staff of the Office of the Auditor-General shall be competitively recruited in accordance to the organisation structure developed by the office of the Auditor-General under this Act and approved by Public Service Commission.
(3) The recruitment and appointment of staff shall take cognisance of regional, ethnic and gender balance including equal opportunities to persons with disabilities and marginalized groups.

18. (1) A State Organ or public entity may upon such request by the Auditor-General, second to the office such number of public officers as may be necessary for proper performance of the functions of the Office.

(2) A public officer seconded to the office shall, during the period of secondment, be deemed to be an officer of the office and subject to the policies and regulations of the office of the Auditor-General.

(3) The Auditor-General may, upon the request of a State Organ or public entity second his or her staff who shall, for the period of such secondment, be under the direction and control of the concerned State Organ or public entity and such an officer shall not audit that State Organ or public entity within a period of thirty-six months after the expiry of the secondment.

19. (1) The Auditor-General may, subject to such conditions as he or she may impose in writing, delegate any power and assign any duty conferred on him or her in terms of this Act or any other written law to a subordinate officer.

(2) A delegation or instruction in terms of subsection (1) shall not absolve the Auditor-General of the responsibility concerning the exercise of his or her power or the performance of the duty.

(3) The Auditor-General may confirm, vary or revoke any decision taken by a member of staff in consequence of a delegation or instruction under this section.

20. (1) The accounting officer shall prepare annually budget estimates of revenue and expenditures and work plans for the next financial year for consideration.

(2) The budget estimates of revenue and expenditure referred to under sub-section (1) shall be submitted to the
Cabinet Secretary responsible for finance not later the 30th March each year for review and submission to the National Assembly in accordance with Article 221 of the Constitution, and National Assembly shall, pursuant to Article 249 (3) of the Constitution, allocate adequate funds to the office of the Auditor General.

(3) The budget estimates submitted under sub-section (2) shall include the following—

(a) estimates of revenue and recurrent expenditure for the coming fiscal year;

(b) estimates for the development expenditure for the coming fiscal year; and

(c) any other matter considered relevant by the Auditor-General in the consideration of the budget and plans of the Office.

21. (1) For the purposes of exercising or performing his or her functions, duties or powers under the Constitution or this Act, and subject to the law relating to data protection, the Auditor-General may require a public body or any person employed by the public body—

(a) to produce any official document in the body’s or person’s custody, care or control; and

(b) to provide the Auditor-General with information or an explanation about any official information, system or asset.

(2) The Auditor-General may obtain such official information as he or she considers necessary to fulfil his or her functions, duties and powers from a person who is not a member, employee or office holder of the public body, within 14 days, and in doing so the Auditor-General may—

(a) advise the person in writing of the nature of the information and why it is needed;

(b) state that the information is required under this Act; and
(c) ask for further information where necessary;

(d) summon the person, if necessary; or

(e) reimburse the person for any reasonable costs incurred in travelling where such person is summoned to appear, as may be determined by the Office.

(2) Where the information required is not official, then the Auditor General will have to apply to the courts to obtain such information.

(3) In cases where the Auditor-General suspects fraud or corruption, he or she may invite the relevant organs for their appropriate action.

22. (1) The Auditor-General may in the course of exercising his or her functions, duties or powers, track a transaction into the account of any person in any bank through an order of the courts, if the Auditor-General has reason to believe that the money belonging to a public body has been fraudulently or wrongfully paid into such person’s account.

(2) When required under this section, the bank shall produce any documents or provide requested information relating to the account in the bank’s custody or control.

(3) In exercising the authority under this section, the Auditor-General shall ensure that any information obtained is not used for any other purpose other than that legally intended and the Auditor-General shall keep in safe custody all the documents and information so obtained. What will happen if this is abused?

(4) The Auditor-General may make copies of any documents so produced.

23. (1) For purposes of carrying out his or her functions under this Act, the Auditor-General may outsource audit services from duly registered audit firms whose partners and staff are not employees of the Office of the Auditor-General to assist in an examination and audit of accounts.
(2) Only a person registered and practising as an accountant under the Accountants Act, 2008, shall be qualified for the purpose of provision of a financial audit opinion under this section.

(3) An auditor appointed under this section shall comply with any lawful directions given by the Auditor-General and shall report to the Auditor-General.

(4) For purposes of his or her appointment, an auditor appointed under this section exercises delegated powers of the Auditor-General relating to examinations and audit.

(5) An auditor appointed under this section shall not certify the results of the examination and audit and shall not submit any report required under this Act other than the report under subsection (3).

(6) During the period of performing the work outsourced, the staff of the outsourced firm shall conform to the provisions of this Act and Code of Ethics developed under this Act.

(7) An officer who previously worked for an organ that is being audited by the Auditor-General shall not audit that organ until after thirty-six (36) months from the time he or she ceased working for that organ.

24. (1) The Auditor-General may in the performance of his or her duties and functions under this Act engage the services of or work in consultation with professional or technical experts or consultants, whether in the public service or not, to enhance the performance of the Auditor-General.

PART III — ESTABLISHMENT OF THE AUDIT ADVISORY BOARD

25. (1) There is established an unincorporated board to be known as the Audit Advisory Board which shall comprise of:

(a) The Attorney-General of Kenya or a person nominated by him or her;

(b) A nominee of the Institute of Certified Public
Accountants of Kenya;

(c) A nominee of the Association of Professional Societies of East Africa;

(d) A nominee of the Law Society of Kenya;

(e) A nominee of the Institute of Internal Auditors of Kenya;

(f) The Chairperson of the Public Service Commission or his or her nominee;

(g) The chairperson of the Public Sector Accounting Standards Board of his or her nominee; and

(2) A person shall be qualified to be nominated under Subsection (2) (c) to (g) above if such person—

(a) has a degree from a university recognised in Kenya;

(b) has a minimum of 15 years’ experience in matters relating to public finance, auditing, accounts, law, governance or public management; and

(c) meets the requirements of Chapter Six of the Constitution

(3) The Auditor-General shall appoint a chairperson from among the persons under subsection (1) above and may co-opt two other members with the necessary expertise.

(4) The nomination and appointment of members under this section shall take cognisance of regional, ethnic, and gender balance and people with disabilities and marginalised groups.

(5) The Auditor-General shall, within 14 days of receipt of names of qualified persons pursuant to subsection (1), by notice in the Gazette, appoint members of the Board.

(6) The members of the Advisory Board shall hold office for a term not exceeding three years from the date of appointment and may be eligible for reappointment for a further one term of three years.
26. (1) The Audit Advisory Board shall meet at least four times in every financial year and not more than twelve times in every financial year and not more than four months shall elapse between one meeting and the next meeting.

(2) The quorum at the meeting of the Audit Advisory Board is five members of the Board or a greater number determined by the Audit Advisory Board in respect of an important matter.

(3) The Senior Deputy Auditor-General of the office of the Auditor-General shall be the Secretary of the Audit Advisory Board.

(4) The Chairperson shall convene and preside at meetings of the Board;

(5) The proceedings of the Audit Advisory Board shall not be invalidated by reason of a vacancy among the members.

27. (1) The principal function of the Audit Advisory Board shall be generally to advice the Auditor-General on the exercise of his or her powers and the performance of his or her function under the Constitution and this Act and shall, in particular but without prejudice comprise of the foregoing—

(a) Recruitment of senior managers into the Office of the Auditor-General;

(b) review and advise the organizational development issues;

(c) review and make recommendations on budget estimates and plans of the office of the Auditor-General;

(d) Review audit committee’s recommendations;

(e) give any other advice that may be sought by the Auditor-General from time to time;

(f) provide counsel on technical issues and any other advise that the Auditor-General may request; and

(g) perform any other function as may be conferred by this Act or any other law.
28. The members of the Audit Advisory Board shall be paid such allowances and expenses as are provided by the Salaries and Remuneration Commission from monies appropriated to the Office of the Auditor General.

PART IV—AUDIT PROCESS AND TYPES OF AUDIT

29. Subject to the Constitution and any written law, the Office of the Auditor-General shall apply the applicable international standards, principles and practices in their audits.

30. Subject to the provisions of Article 201 and 232 of the Constitution, the Auditor-General shall determine the scope and extent of the examination or inspection of accounts and any other documents related to public expenditures or any audits under this Act, which he considers necessary in carrying out his or her responsibilities and functions specified under this Act.

31. (1) The certification audit process steps shall be as follows—

(a) within three months after Parliament or the County Assembly has debated and considered the final report of the Auditor General and made recommendations, a State Organ or a public entity that had been audited shall, as a preliminary step, submit a report on how it has addressed the recommendations and findings of the previous year’s audit.

(b) at the beginning of the audit examination of the financial statements of a State Organ or public entity, an inception meeting shall be held to deliberate on the scope of the financial audit, between the Auditor-General and the accounting officer and the financial statements to be audited should have been signed by the accounting officer and the substantive head of that entity, if different from the accounting officer and the Chairperson of the governing body, where applicable;

(c) at the conclusion of the audit examination of the financial statements of each State Organ, an exit
meeting shall be held at which the Auditor-General shall submit a draft management letter which shall include findings and recommendations to the accounting officer and comments of the accounting officer on the Auditor-General's findings and recommendations and the Auditor-General shall provide a copy of the report to the substantive head of that entity, if different from the accounting officer and, the Chairperson of the governing body, where applicable.

(3) For all other audits or investigation, the Auditor General shall inform the State organ or public entity to be audited or investigated in writing before commencement of the audit or investigation.

(4) The Auditor-General shall include in his or her report under this section—

(a) recommendations on how a State Organ or public entity may improve the application of funds in a lawful and in an effective way; and

(b) how responsive the State organ or public entity has been to past audit findings and recommendations.

(5) The accounting officer shall within fourteen days from the date of receipt of the draft management letter, submit a response to the Auditor-General including remedial actions that have been undertaken to address any qualifications in the draft management letter.

(6) If within fourteen days the Auditor General will not have received a response, the Auditor-General shall proceed with the finalisation of the final management letter.

32. (1) The final report by an internal auditor which has been deliberated on and adopted by an audit committee of a State Organ or public entity, may be copied to the Auditor-General.
33. The Auditor-General may, upon request or at his/her own initiative conduct periodic audits which shall be proactive, preventive, deterrent to fraud and corrupt practices, systemic and shall be determined with a view to evaluating the effectiveness of risk management, control and governance processes in State Organs and public entities.

34. The Auditor-General shall conduct audits of financial statements under Article 229 of the Constitution for State Organs and public entities and report annually to Parliament and relevant county assembly.

35. The Auditor-General may conduct performance audit to examine the economy, efficiency and effectiveness with which public money has been expended pursuant to Article 229 of the Constitution.

36. The Auditor-General may, upon request, conduct forensic audits to establish fraud, corruption or other financial improprieties.

37. The Auditor-General shall conduct an environmental audit to ascertain as to whether public money has been expended with due regard to the environmental impact of those expenditures.

38. The Auditor-General may examine the public procurement and asset disposal process of a state organ or a public entity with a view to confirm as to whether procurements were done lawfully and in an effective way.

39. (1) All reports of an audit shall be submitted to parliament or the relevant county assembly.

(2) Within seven (7) days of receiving the report, Parliament or the relevant county assembly shall publicise it on their official website and other public spaces.

(3) Within fourteen (14) days after the expiry of (7) days upon submitting the report to Parliament or the relevant county assembly, the Auditor-General shall publicise the report on their official website and other
40. (1) The Auditor-General shall not include particular information in a public report if:

(a) the Auditor-General is of the opinion that disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2); and

(b) the Attorney-General has issued a certificate to the Auditor General stating that, in the opinion of the Attorney General, disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2).

(2) The Auditor-General may exclude information from an audit report under subsection (1)(b) above for the following reasons:

(a) it would prejudice the security, defence or international relations of the Government of the Republic of Kenya;

(b) it would involve the disclosure of confidential deliberations or decisions of the Cabinet or of a Committee of the Cabinet;

(c) it would divulge any confidential information or matter that was communicated in confidence by the National Government to a County Government, or by a County to the National Government and which would prejudice national security or relations between the two levels of government;

(d) it would unfairly prejudice the commercial interests of anybody or person;

(e) any other reason that could form the basis for a claim by a foreign State or persons on the National Government or a County Government in a judicial proceeding.

(3) The Auditor-General shall be required under a closed door session, and is permitted, to disclose to a
information that subsection (1) prohibits being included in a public report.

(4) If the Auditor-General omits particular information from a public report because the Attorney-General has issued a certificate under paragraph (1)(b) in relation to the information, the Auditor-General must state in the report:

(a) that information (which does not have to be identified) has been omitted from the report; and

(b) the reason or reasons (in terms of subsection (2)) why the Attorney-General issued the certificate.

(5) All the staff of the Office of the Auditor-general carrying out audit under this Section shall undergo a vetting process carried out by the appropriate security agency and shall take an oath of confidentiality and such officers shall be at a grade equivalent to Deputy Director of Audit or above.

(6) For purposes of this section, Cabinet shall approve the categories of security related projects which shall qualify for audit under this section.

(7) Pursuant to the decision of the Cabinet under subsection (6) the Cabinet Secretary shall gazette the categories of security related projects.

(8) In this section:

"information" includes written comments on the proposed report or the extract that are received by the Auditor General under this Section

"public report" means a report that is to be tabled in either House of the Parliament.

PART V—ACCOUNTS OF THE OFFICE OF THE AUDITOR-GENERAL

41. (1) The funds of the Office of the Auditor-General shall consist of—
(a) monies appropriated by Parliament for the purposes of the Office of the Auditor-General;

(b) such monies or assets as may accrue to the office of the Auditor-General in the course of the exercise of the Auditor-General’s powers or the performance of his functions under this Act;

(c) audit fees charged at the rates prescribed by the Auditor-General and approved by Parliament;

(d) investment income subject to annual approval by Parliament; and

(e) all monies from any other source provided or donated or lent to the office of the Auditor-General and such monies shall be disclosed to Parliament.

(2) The receipts, earnings or accruals of the office of the Auditor-General shall not be paid into the Consolidated Fund but shall be retained for purposes of this Act in accordance with Article 206(1) (b) of the Constitution.

(3) The Auditor-General may open and maintain such bank accounts in accordance with section 28 of the Public Finance Management Act, 2012, as are necessary for the exercise of the functions of the office of the Auditor-General and shall pay into them all monies received from the Government, or from any other source, for the purposes of this Act.

42. (1) For each financial year, the Accounting Officer of the office of the Auditor-General shall prepare and submit upon approval by the Auditor-General, for audit the financial statements of the office of the Auditor-General to an external auditor appointed by the National Assembly in accordance with Article 226 (4) of the Constitution.

(2) The financial statement shall include the following—

(a) a statement of financial performance;
(b) a statement of financial position;

(c) a statement of changes in net assets;

(d) a statement of accounting policies and notes to the financial statements;

(e) a statement of performance of the Office of the Auditor-General against predetermined objectives.

(3) Without prejudice to subsection (2), the Accounting Officer shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed and published by the Public Sector Accounting Standards Board in accordance with the Public Finance Management Act, 2012.

43. (1) The accounting officer of the office of the Auditor-General shall submit accounts of the office to the appointed auditor under section 42, within three months after the end of the financial year to which the accounts relate.

(2) The appointed auditor shall examine and audit the submitted accounts of the office of the Auditor General within six months after the end of the financial year in accordance with the provisions of Part III of this Act, express an opinion and certify the result of that examination and audit.

(3) The appointed auditor shall examine whether or not public money has been applied lawfully and in an effective way.

44. (1) The appointed auditor shall prepare a report on the examination and audit and submit the report to each relevant Clerk of Parliament, with a copy to the Cabinet Secretary responsible for finance and the Auditor-General.

(2) Subject to Article 35 of the Constitution, Parliament shall publicise it on their official website and other public spaces.
(3) Within fourteen (14) days after the expiry of (7) days upon submitting the report to Parliament, the Auditor-General shall publicise the report on their official website and other public spaces.

(4) Without limiting what may be included in the report—

(a) the report shall indicate whether—

(i) the information and explanations that were required to perform the examination and audit were received;

(ii) proper books of accounts have been kept and the accounts are in agreement therewith;

(iii) the accounts present a true and fair view of the financial position of the office of the Auditor-General; and

(b) the report shall identify cases in which—

(i) money has been spent in a way that was not lawful, economical, efficient and effective; and

(ii) the rules and procedures followed or the records kept were inadequate to safeguard assets, liabilities and the collection of revenue.

45. Within three months after receiving an audit report for the accounts of the Office of the Auditor-General, the National Assembly shall debate and consider the Annual Report of the office of the Auditor-General, comprising the financial statements and the activities of the office and take appropriate action.

PART VI—REPORTING BY AUDITOR-GENERAL

46. (1) The financial statements required under the Constitution, the Public Finance Management Act, 2012
and any other legislation, shall be submitted to the Auditor-General within three months after the end of the fiscal year to which the accounts relate.

(2) The financial statements shall be in the form and content as prescribed by the Public Sector Accounting Standards Board.

47. Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on the accounts specified in Article 229 of the Constitution.

(2) Without prejudice to the provisions of subsection (1), the Auditor-General may audit and report on the accounts of any entity that is funded from public funds.

48. (1) If, in the course of an examination and audit, a matter comes to the attention of the Auditor-General that he or she feels should be brought to the attention of the Parliament or the relevant county assembly, the Auditor-General shall submit a special report to Parliament or the relevant county assembly in accordance with the protocols developed in the Regulations.

(2) Within seven (7) days of receipt, Parliament or the relevant county assembly, it shall publicize that report on their official website and any other public notice and shall publish a notice in the gazette to inform the public of the availability of the report.

(3) Within fourteen (14) days following the expiry of the seven days referred to under subsection (2), the office of the Auditor-General shall publicize that report on its official website and any other public notice.

(4) Within thirty (30) days following the expiry of the seven days referred to under subsection (2), Parliament or relevant county assembly shall discuss and review the report.

(5) For the avoidance of doubt, the provisions under this section shall also apply to national security organs but any information on any classified activity shall not be published or publicised.
49. (1) The final audit report of the Auditor-General shall be submitted to Parliament or the relevant county assembly, with copies to the Cabinet Secretary responsible for finance and the relevant County Executive Committee member for finance, as the case may be, and the accounting office of the entity that is subject of the audit.

(2) Within three months of receiving an audit report referred to under subsection (1), Parliament or the relevant county assembly shall debate and consider the report and take appropriate action.

50. (1) Within thirty (30) days following the expiry of the seven days of publicization period, Parliament or the relevant county assembly shall discuss and review other reports submitted to them.

(2) Within fourteen (14) days following the expiry of the seven days publicization period, the office of the Auditor-General shall publicize the report on its official website and any other public notice.

51. Where Auditor-General makes use of national or local media to publicise the reports under this Act, he or she shall take into consideration the following factors—

(a) the general nature of the report or document;

(b) how and where it has been published and how it may be accessed and read by members of the public;

(c) the need to widely circulate a summarized version of the report.;

(d) accessibility of the document at public libraries or offices of State Organs and public entities; and

(e) any other forum that the Auditor-General may consider appropriate.

52. (1) The relevant accounting officer of a state organ or public entity shall within three months after Parliament has considered and made recommendations on the audit
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report:-

(a) take the relevant steps to implement the recommendations of parliament on the report of the Auditor-General; or

(b) give explanations in writing to the Parliament on why the report has not been acted upon.

(2) Failure to comply with the provisions of subsection (1), the accounting officer shall be in contempt of Parliament or County Assembly and upon determination by Parliament or relevant County Assembly, Parliament or relevant County Assembly may recommend administrative sanctions such as removal as the Accounting Officer, reduction in rank among others.

53. Where there is a serious material breach or persistent material breaches of the provisions of this Act, the Auditor-General may in his audit report to Parliament or the relevant county assembly pursuant to Public Finance Management Act, 2012, recommend the withholding of funds to any State Organ or public entity.

PART VII—THE CODE OF CONDUCT AND ETHICS

54. Failure to comply with the provisions of subsection (1), the accounting officer shall be in contempt of Parliament or County Assembly and upon determination by Parliament or relevant County Assembly, Parliament or relevant County Assembly may recommend administrative sanctions such as removal as the Accounting Officer, reduction in rank among others.

55. It shall be the obligation of every officer of the Office of the Auditor-General to observe the Code of Conduct and Ethics developed by the Auditor-General under section 54.

56. (1) Any staff of the Office of the Auditor-General or an auditor outsourced by the Office who may be proven to have been compromised, bribed or corrupted in consideration for suppressing a fraud or corrupt practice by
the Auditee client shall be liable to administrative action under this Act or by the relevant professional body over and above any criminal proceedings which may be preferred against him or her in accordance with this Act or any other written law.

57. (1) All staff of the Office of the Auditor-General are duty bound to disclose any fraud or corruption that comes to their attention immediately and a disciplinary action shall be taken against any officer who knowingly covers up any acts of fraud or corruption.

(2) Despite the provisions of subsection (1), an officer of the Office of the Auditor-General shall not divulge any information which relates to the business secret of the Auditee which comes to his or her knowledge in the course of duty unless is for official purposes provided for under this Act or any other written law.

58. (1) An officer of the Office of the Auditor-General who has an interest in a matter for consideration in the auditee client shall disclose in writing, the nature of that interest and shall not participate in any auditing exercise relating to that client.

(2) An officer who fails to disclose an interest in a matter in accordance with subsection (1) shall be subject to administrative action under the provisions of this Act or Regulations made thereunder.

59. (1) The Auditor-General shall put in place a mechanism for confidential reporting about the officers of the Office of the Auditor-General relating to unlawful acts or orders relating to violation of laws in relation to public funds, gross wastage, mismanagement and abuse of authority.

(2) Any person reporting a corrupt practice or misconduct by an audit officer with knowledge or good faith or belief that the allegation or information is true, shall be treated with utmost confidentiality.

(3) Allegations and concerns reported anonymously shall be reviewed and considered as appropriate and some of the factors to be considered by the Auditor-General shall
include the seriousness of the allegation, its credibility, and the extent to which the allegation can be confirmed or corroborated by attributable sources.

(4) Subject to the Witness Protection Act, 2006 the Auditor-General shall not disclose the identity of a person under this section. unless—

(a) such person agrees to be identified;

(b) identification is necessary to allow appropriate law enforcement official to investigate or respond effectively to the disclosure;

(c) is required by law where a false accusation has been maliciously made; or

(d) the person accused is entitled to the information as a matter of legal right and in such an eventuality the Auditor-General, shall inform the person prior to revealing his or her identity.

PART VIII—OFFENCES AND SANCTIONS

60. (1) Any officer of the Office of the Auditor-General commits an offence if that officer—

(a) engages in a corrupt act;

(b) knowingly and willfully conceals information on audit findings for whatever reason, including in order to obtain a financial benefit for the officer or an accomplice or another person;

(c) knowingly and willfully fails to disclose audit information on fraud or corrupt practice by the audited entity;

(d) fails to disclose any conflict of interest in any matter under consideration in the course of discharging any functions under this Act;

(e) divulges information relating to national security organs;
(f) Discloses or publishes or publicizes the Auditor General's audit report or its contents to third parties including the media before the report is finalized and formally submitted to Parliament or County Assembly and copied to the auditee entity and other authorized offices; or

(g) by his or her direction or approval or decision leads to a loss of public funds,

(2) Any officer of the Office of the Auditor-General who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both.

61. (1) A person shall not—

(a) without reasonable cause or lawful excuse, obstruct or hinder, assault or threaten a member of staff of the Office of the Auditor-General acting under this Act;

(b) without justification, fail to provide information required under this Act;

(c) submit false or misleading information;

(d) misrepresent to or knowingly mislead a member of staff of the Office of the Auditor-General acting under this Act; or

(e) interfere with or exert undue influence on any staff of the Office of the Auditor-General or on any person authorized by the Auditor-General to perform functions under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding one year, or to both.

62. Except as otherwise provided for under this Act, a
person is liable on conviction to a fine not exceeding two million shillings or to a term of imprisonment not exceeding one year or, to both.

63. (1) Where the Auditor-General establishes that any person, supplier or company has been involved in fraud or corrupt practice, the Auditor-General shall report to the police, Ethics and Anti-Corruption Commission or the Public Procurement Oversight Authority for their action.

(2) Where the matter is referred to the Public Procurement Oversight Authority, the Auditor-General may make recommendation for debarment from future public procurement and asset disposals proceedings of a state organ or public entity with a copy to the relevant accounting officer.

64. If it is established by the Auditor-General that there has been any deficiency in respect of any money or assets subject to its audit, the Auditor-General may recommend to Parliament or county assemblies that the person in default or responsible should be surcharged with the amount of the deficiency or loss.

65. A person who is convicted of an offence under this Act shall not be eligible to hold public office or work with an entity owned in whole or part by the State for a period of ten years following the conviction.

66. Where the Auditor-General becomes aware of—

(a) any payment made without due authority; or

(b) any deficiency or loss occasioned by negligence or misconduct; or

(c) any sum which ought to have been, but was not brought to account,

he or she shall, in the case of expenditure, call in question the sum concerned and make a report on the sum to Parliament and the relevant county assembly.
PART IX—GENERAL PROVISIONS

67. Except as otherwise provided in an Act of Parliament, the office of the Auditor General shall be subject to the provisions of:

(a) Public Finance Management Act;

(b) Public Procurement and Asset Disposal Act; and

(c) any other Acts of Parliament on governance matters.

68. The Cabinet Secretary responsible for finance, in consultation with the Auditor-General may make Regulations not inconsistent with this Act respecting any matter that is necessary or convenient to be prescribed under this Act or for the carrying out or giving effect to this Act.

69. The Auditor-General may make a written request to the Attorney-General seeking a legal opinion or advice on matters of law or fact, as the case may be.

70. This Act shall prevail in case of any inconsistency between this Act and any other legislation relating to the functions and powers of the Auditor-General.

71. The Auditor-General and his or her staff, or a person acting on the directions of the Auditor-General shall not be personally liable for any act or omission done or omitted in good faith in carrying out any duty, or exercising any power or function of the Auditor-General under this Act or the Constitution.

72. In performance of his or her functions and duties under this Act, the Auditor-General may not question the merits of a policy objective of government or any other state organ or public entity.

73. The Public shall have right of access to official reports of the Auditor-General in line with Article 35 of the Constitution for transparency and accountability, except where such access may unduly jeopardize state security.
PART X—REPEAL, SAVINGS AND TRANSITION PROVISIONS

74. (1) The Public Audit Act, 2003, is repealed.

(2) Despite subsection (1)—

(a) any proceedings taken against or by the Kenya National Audit Office or pending against that office or any other person immediately before the commencement of this Act may be continued by or against the Kenya National Audit Office as if instituted under this Act:

Provided that criminal proceedings shall be regarded as pending if the person concerned had pleaded to the charge in question.

(b) any administrative investigation or inquiry instituted in terms of the repealed Act which was pending before the commencement of this Act shall be continued or disposed of as if instituted under this Act;

(c) all disciplinary proceedings which immediately before the commencement of this Act were pending shall be continued or concluded as if instituted under this Act;

(d) all appeal processes, which immediately before the commencement of this Act were pending, shall proceed as if instituted under this Act;

(e) the persons employed by the Kenya National Audit Office shall be transferred to the Office of the Auditor-General established under this Act;

(f) a contract subsisting between the Kenya National Audit Office and another person before the commencement of this Act shall cease to exist within thirty (30) days from the day of commencement of this Act; and

(g) the Kenya National Audit Commission established by the repealed Act shall cease to exist within thirty (30) days from the day of commencement of this Act;
(3) Any references to the words “Controller and Auditor-General” under any written law shall be construed to refer to the words “Auditor-General”.
SCHEDULE

OATH/AFFIRMATION OF THE HOLDER OF OFFICE OF THE AUDITOR-GENERAL

I .................................................. having been appointed (the Auditor-General) under the Public Audit Act, 2014, do solemnly (swear/declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said ..........................................................

Before me this .............................. Day of ..............................

Chief Justice
The Principal purpose of this Bill is to provide for the functions and powers of the Office of the Auditor-General in accordance with the relevant provisions of the Constitution.

**Clauses 1-3** of the Bill contains preliminary matters.

**Clause 3** of the Bill further provides for the guiding values and principles to the Office of the Auditor-General in discharging its functions, including:

(a) the national values and principles provided for under Article 10 of the Constitution;

(b) the equality and freedom from discrimination provided for under Article 27 of the Constitution;

(c) the responsibilities of leadership provided for under Article 73 of the Constitution;

(d) the principles governing the conduct of State officers provided for under Article 75 of the Constitution;

(e) the principles of public finance under Article 201 of the Constitution; and

(f) the values and principles of Public Service as provided for under Article 232 of the Constitution.

**Clause 4** of the Bill establishes the Office as a corporate body in accordance with Article 253 of the Constitution capable of suing and being sued; acquiring, safeguarding, holding, charging and disposing of moveable and immovable property; and doing or performing all such other things or acts for the proper discharge of its functions under the Act, which may be lawfully done by a body corporate.

**Clause 5** of the Bill provides for the qualifications for appointment as Auditor-General.
Clause 7 of the Bill sets out the functions and powers of the Office of the Auditor-General in addition to functions and responsibilities set out in Article 229 of the Constitution. Among them, the Auditor-General shall:

(a) give assurance on the effectiveness of internal controls, risk management and overall financial systems by state organs and public entities;

(b) undertake audit activities in state organs and public entities to confirm whether or not public money has been applied lawfully and in an effective way; and

(c) satisfy himself or herself that all public money has been used and applied to the purposes intended and that the expenditure conforms to the authority for such expenditure.

Clause 8 of the Bill further sets out administrative powers of the Auditor-General in additional to any other powers conferred under the Constitution, the Act and any other relevant law. Among them being:

(a) development of an organisation structure and staffing establishment for the Office of the Auditor-General;

(b) recruitment and promotion of qualified and competent staff to perform the Office’s functions;

(c) subject to Article 230 (4)(b) of the Constitution, determination of the remuneration and benefits of each member of staff; and

(d) development and maintenance of a Code of Conduct and Ethics for the Office, specific to auditing, guided by the international code of practice.

Clause 9 of the Bill contains general powers of the Auditor-General including powers:

(a) to conduct investigations on his or her own initiative;

(b) to obtain professional assistance, consultancy, or advice from such persons or organizations whether within or outside public service;
(c) to issue summons to a witness for the purposes of his or her investigation; and

(d) to request any public officer who is subject to this Act to provide explanations, information and assistance in person and in writing.

Clause 10 of the Bill provides for the independence of the Auditor-General.

Clause 11 of the Bill provides for how a vacancy in the Office of the Auditor-General occurs and the process of filling the vacancy.

Clause 12 of the Bill provides for an Acting Auditor-General in the event the Auditor-General is not able to perform his/her duties for reasons specified.

Clause 15 of the Bill further provides for the position of the Senior Deputy Auditor-General to be recruited by the Office of the Auditor-General and appointed by the Public Service Commission.

Clause 16 of the Bill contains the responsibilities of the Senior Deputy Auditor-General to include:

(a) being the head of administration and management of the Office of the Auditor-General; and

(b) being the accounting officer of the Office of the Auditor-General.

Clause 20 of the Bill provides for the process of preparation of the Budget estimates of revenue and expenditures and work plans for the Office of the Auditor-General for next financial year to be submitted to the Cabinet Secretary for finance for onward transmission to the National Assembly in accordance with Article 221 of the Constitution.

Clause 21 of the Bill further gives powers to the Auditor-General in exercising his or her functions, and subject to the law of data protection, to require a public body or any person employed by public body to produce any document in the body’s or person’s custody or control, and to provide any information or an explanation about any information, system or asset.
Clause 22 of the Bill contains powers of the Auditor-General to examine bank accounts for the purpose of tracking any transaction into the account of any person through an order of the court where he or she has reason to believe that the money belonging to a public body has been fraudulently or wrongfully paid into such person’s account.

Clause 25 of the Bill further provides for the establishment of Audit Advisory Board as an unincorporated body made up of five members nominated by:

(a) the Institute of Certified Public Accountants of Kenya;

(b) the Law Society of Kenya,

(c) Public Universities;

(d) the Association of Internal Auditors; and

(e) the Non-Governmental Organizations Council.

Clause 27 of the Bill contains the functions of the Advisory Board which shall be generally to advise the Auditor-General on exercise of his or her powers and performance of his or her functions under the Constitution and the Act. Further to this general function, the Board will in particular and among others:

(a) recruit senior managers into the Office of the Auditor-General;

(b) review and advise on the organizational development issues;

(c) review and make recommendations on budget estimates and plans of the Office of the Auditor-General;

(d) review audit committee’s recommendations;

(e) give any other advice that may be sought by the Auditor-General from time to time; and

(f) provide counsel on technical issues and any other related advice that the Auditor-General may request;
**Clauses 29-40** of the Bill provides for the audit process and types of audit. Among the types of audit shall include periodic audits, annual financial audit, performance audit, forensic audit, procurement audit etc.

**Clauses 41-45** of the Bill provides for provisions on the accounts of the Office of the Auditor-General and in particular **Clause 41** deals with the sources of funds of the Office being:

(a) monies appropriated by Parliament for the purposes of the Office of the Auditor-General;

(b) such monies or assets as may accrue to the office of the Auditor-General in the course of the exercise of the Auditor-General’s powers or the performance of his functions under this Act;

(c) audit fees charged at the rates prescribed by the Auditor-General and approved by Parliament;

(d) investment income subject to annual approval by Parliament; and

(e) all monies from any other source provided, donated or lent to the Office of the Auditor-General.

**Clauses 46-59** of the Bill further deals with the reporting by the Auditor-General and the provisions on determination of the Code of Conduct and its application.

**Clauses 60-66** of the Bill contains provisions relating to offences and sanctions.

The Bill does not contain provisions offending the Constitution.

The Bill affects both national and county governments in terms of accountability in managing and usage of public finances.

The enactment of this Bill will occasion additional expenditure of public funds which shall be provided for in the annual estimates.

HON. ADEN DUALLE,
*Leader of the Majority Party, National Assembly.*